IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

WEDNESDAY, THE 4TH JULY 2007 / 13TH ASHADHA 1929

WP(C).No. 12410 of 2006(B)

PETITIONER:

K.SULFULL AFSAL,
AGED 32 YEARS,S/O. KUNJU MOHAMMED (LATE)
DRAWING TEACHER,P.T.M. HIGH SCHOOL,
TRIKKATIRI,OTTAPPALAM,
PALAKKAD DISTRICT.

BY ADV. SRI.V.A.MUHAMMED
SRI.K.E.HAMZA

RESPONDENTS:

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1. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT,
SECRETARIAT,
TRIVANDRUM.

2. TTHE DIRECTOR OF PUBLIC INSTRUCTION,
JAGHATHY,
TRIVANDRUM-14.

3. THE DEPUTY DIRECTOR OF EDUCATION,
PALAKKAD.

4. THE DISTRICT EDUCATION OFFICER,
OTTAPPALAM,
PALAKKAD DISTRICT.

5. THE MANAGER,
P.T.M. HIGH SCHOOL,TRIKKATIRI,
OTTAPPALAM,PALAKKAD DISTRICT.

6. SMT. ZAKKEENA KANITHODI,
HIGH SVCHOOL ASSISTANT (SOCIAL STUDIES)
P.T.M. HIGH SCHOOL,TRIKKATTIRI,
OTTAPPALAM,
PALAKKAD DISTRICT.

BY ADV. SRI.SANTHEEP ANKARATH -- R6
SRI.K.P.SUDHEER – R5
GOVERNMENT PLEADER SMT. AJ VARGHESE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/07/2007 ALONG WITH WPC NOS. 21057 OF 2006 AND 6372/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE REQUEST OF THE PETITIONER BEFORE THE R5 DT. 12/11/2002.

EXT.P2. COPY OF THE REQUEST OF THE PETITIONER BEFORE THE DIST. EDL. OFFICER, OTTAPALAM DT. 11/12/02.

EXT.P3. COPY OF THE REQUEST OF THE PETITIONER BEFORE THE DY. DIRECTOR OF EDN PALAKKAD DT. 20/12/2002.

EXT.P4. COPY OF THE ORDER NO. EM1/12556/03/DPI/L.DIS OF THE R2 DT. 29/6/04.

EXT.P5. COPY OF THE REVISION PETITION FILED BEFORE THE GOVT. DT. 20/12/2005.

EXT.P6. COPY OF THE JUDGMENT OF THIS COURT IN WPC NO. 1312/2006 DT. 16/1/2006.

EXT.P7. COPY OF THE HEARING NOTICE NO. 6761/K1/2006/G.EDN OF THE GOVT. DT. 3/3/06.

EXT.P8. COPY OF THE GO RT NO. 1608/06/G1/EDN OF THE GOVT. DT. 20/4/06.

EXT.P9. COPY OF THE DECISION REPORTED IN 1973 KERALA LAW JOURNAL 591 DT. 28/03/73.

EXT.P10. COPY OF THE ORDER NO. B5/4137/2002 OF THE DEO DT. 5/2/2003.

EXT.P11. COPY OF THE ORDER NO. B5/6061/03/K.DIS OF THE DDE DT. 18/8/03.

EXT.P12. COPY OF THE ORDER NO. EM1 21638/2003/DPI/ D.DIS OF THE DIRECTOR DT. 8/8/03.

EXT.P13. COPY OF THE REVISION PETITION FILED BEFORE THE GOVT. DATED NIL.

EXT.P14. COPY OF THE ORDER NO. 62500/A1/2003/G.EDN OF THE GOVT. DT. 1/12/03.

EXT.P15. COPY OF THE PETITION FILED BEFORE THE MINISTER FOR EDN. DT. 31/12/2003.

EXT.P16. COPY OF THE LETTER NO. 454/A1/2004/GL. EDN. OF THE GOVT. DT. 1/11/04.

EXT.P17. COPY OF THE PETITION FILED BEFORE THE MINISTER FOR EDN DT. 9/11/04.

EXT.P18. COPY OF THE DECISION REPORTED IN 2007(2) KLT 325 DT. 9/3/07.

EXT.P19. COPY OF THE LETTER NO. B5/17075/05/L.DIS OF THE DY. DIRECTOR OF EDN DT. 21/7/2005.

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EXT.P20. COPY OF THE GO RT NO. 2038/2003/G.EDN OF THE GOVT. DT. 3/6/03.

EXT.P21. COPY OF THE DECISION REPORTED IN 1972 KLJ 761 DT. 20/07/1972.

RESPONDENT'S EXHIBITS

EXT.R5A. COPY OF THE REPRESENTATION DT. 12/11/02 BY THE PETITIONER BEFORE THE R5.

EXT.R6A. COPY OF THE ORDER NO. GO RT 2278/2006/G.EDN DT. 3/6/06 BY THE R1.

True copy

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A.K. Basheer, J.

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W.P(C) Nos.12410 & 21057/2006
&
6372 of 2007

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Dated this the 4th day of July, 2007.

J U D G M E N T

Since the issues involved in these three writ petitions are closely inter-related, they are being disposed of by this common judgment.

2. While the grievance of the common petitioner in W.P.12410/06 and W.P.6372/07 is that his claim for promotion to the post of High School Assistant (Social Studies) with effect from June 5, 2005 has been overlooked by the Manager, the grievance of the petitioner in the other writ petition is that approval for her appointment as High School Assistant (Social Studies) in the school in a short term maternity leave vacancy from June 5, 2002 to October 17, 2002 has been declined without any valid or justifiable reasons.

3. The relevant facts may be briefly noticed. The parties and documents in W.P.No.12410/06 shall be referred to hereinafter, unless otherwise indicated.

4. The common petitioner in W.Ps.12410/06 and 6372/07 is a Drawing Teacher working in P.T.M. High School, Trikkatiri in Palakkad district. It is the admitted position that a vacancy of High School Assistant (Social Studies) had arisen in the school on June 20, 2001, when the incumbent Sri.Kasim Kunnath had availed of

leave for 5 years. Against the said leave vacancy the Manager had appointed respondent No.6 with effect from June 21, 2002. According to the petitioner the Manager ought to have promoted him to the above post of HSA (SS) since he was fully qualified to hold the said post. It is the further case of the petitioner that he had approached the Manager and the educational authorities requesting for appropriate action, but to no avail. Ultimately the petitioner approached the Director of Public Instruction who by Ext.P4 order rejected the claim of the petitioner holding that there was no sanctioned post of HSA(SS) in the school to accommodate him, since 6 High School Assistants were already working as against 4 sanctioned posts of HSA (SS). The above order of the Director was challenged by the petitioner before the Government.

5. In the meanwhile, it appears, that the Manager and respondent No.6 had approached the Government for approval of appointment of respondent No.6. The Government by Ext.P8 order dated April 20, 2006 upheld the contention of the Manager that respondent No.6 had been appointed against the deputation vacancy of Sri.Kasim Kunnath who availed of leave for 5 years and that at the time of appointment of respondent No.6, no protected teachers were available. The Government therefore ordered that appointment of respondent No.6 with effect from June 21, 2002 be approved as a special case till Sri.Kasim Kunnath rejoins duty after completing the period of deputation. The said order is under challenge in WP.12410/06. Shortly thereafter the Government passed an order on the revision petition filed by the petitioner on June 3, 2006 rejecting his claim for promotion to

the above deputation (leave) vacancy on the ground that petitioner had not informed either the Manager or the Department that he had acquired sufficient qualification for promotion before or at the time when the Manager had appointed respondent No.6 as HSA (SS). A copy of the said order is on record as Ext.R6(a). The above order has been challenged by the petitioner in WP.6372/2007 which was subsequently filed by him.

6. It is primarily contended by the petitioner that since he had got the requisite qualification to be promoted as HSA (SS) in the vacancy that had arisen when Sri.Kasim Kunnath had availed of leave for 5 years, the Manager ought to have given him promotion to the above post. But it is admitted by the petitioner that he became qualified to be promoted as HSA (SS) only on April 4, 2002. As noticed already, Sri.Kasim Kunnath had availed of leave with effect from June 20, 2001. Therefore when the vacancy of HSA arose in the school, petitioner was not qualified to be promoted. It is true that Manager had appointed respondent No.6 in the said vacancy with effect from June 21, 2002. As on the date of appointment of respondent No.6 petitioner might have been qualified, but as rightly noticed by the Government, petitioner had not staked any claim for promotion either prior to or at the time of appointment of respondent No.6. The Manager has produced Ext.R5(a) request received from the petitioner to promote him as HSA. The said request was submitted on November 12, 2002. The Government had also noticed that petitioner had submitted a representation in this regard before the District

Educational Officer only on December 11, 2002 and before the Deputy Director of Education on December 20, 2002. Thus there is considerable force in the contention raised by the Manager that at the time when he appointed respondent No.6 as HSA, he was not aware that petitioner was qualified to be promoted. Petitioner had staked the claim for promotion for the first time only in November 2002 after about 5 months of appointment of respondent No.6 . In that view of the matter, the action of the Manager in appointing respondent No.6 against the deputation vacancy for a period of 5 years cannot be faulted.

7. It may also be noticed that the period of deputation of Sri.Kasim Kunnath is already over and it is submitted by the learned counsel at the Bar that the incumbent has already rejoined duty.

8. There is yet another aspect of the matter. In Ext.P8 order the Government had acceded to the request of the Manager to approve the appointment of respondent No.6 as a special case, apparently invoking the power under Rule 3 Chapter I KER. Admittedly Sri.Kasim Kunnath had gone on deputation to assume duty as Personal Assistant to the local Member of the Legislative Assembly. The fact remains that the Government has chosen to exercise its discretionary power under the rule referred to above and granted approval of appointment of respondent No.6 during the period of deputation as a special case. In the absence of imputation of any malafides, petitioner cannot be heard to say that Ext.P8 order issued by the Government is either illegal or vitiated.

9. It may also be noticed that Government has directed the Manager to promote the petitioner as HSA (SS) in the next vacancy which may arise in the school. This direction is contained in Ext.R6(a) order. Therefore the grievance of the petitioner stands redressed to a large extent.

10. In the above facts and circumstances I do not find any reason to allow the prayer made by the petitioner to quash the impugned orders of the Government.

WP.21057/06

11. Grievance of the petitioner in this writ petition is that approval for her appointment in a leave vacancy has been declined by the educational authorities without any valid or justifiable reasons. It is beyond controversy that a short term maternity leave vacancy of HSA (SS) had arisen in the school with effect from June 5, 2002. Smt.C.Ambika (petitioner herein) was appointed against the said vacancy with effect from the instant date till October 17, 2002. But the departmental authorities had rejected the request made by the Manager and the petitioner to approve the above appointment on the ground that there was no sanctioned post in the school in terms of G.O(P). 11/02/G.Edn. dated 7/1/2002. It was also noticed by the departmental authorities that the school being a newly opened institution as per paragraph 1 of G.O (P)178/02, all existing/arising vacancies ought to have been filled up by appointing protected teachers.

12. It is brought to my notice that petitioner has preferred Ext.P5 revision petition before the Government against the orders passed by

the departmental officers. One of the directions in this writ petition is to issue a direction to the Government to take a decision on Ext.P5 revision petition. The other prayer is to quash the order of the Government approving the appointment of respondent No.6 in the other two writ petitions (respondent No.7 herein). It has already been found that the order of the Government does not suffer from any illegality or infirmity. Therefore the challenge against the said order (a copy of which is on record as Ext.P6 in this writ petition) cannot be sustained for the same reasons stated in the earlier part of the judgment.

13. Therefore Writ Petition No.21057/06 is disposed of with a direction to respondent No.1 to consider and pass orders on Ext.P5 revision petition strictly on its merit and in accordance with law, as expeditiously as possible, at any rate within three months from the date of receipt of a copy of this judgment. Needless to mention that petitioner, the Manager and all others who are likely to be affected by any order that may be passed by respondent No.1, shall be afforded sufficient opportunity to be heard before any decision is taken in the matter.

14. Petitioner shall produce a certified copy of the judgment along with a copy of the writ petition before respondent No.1 for compliance.

W.P.Nos.12410/2006 and 6372/07 are dismissed.

A.K. Basheer
an. **Judge.**